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SUBJECT: AMINA LAWAL: THE JUDGMENT

1. Summary: Amina Lawal's conviction for Zina (adultery) was overturned by the Katsina State Shari'a Court of Appeal on September 25. The decision by four appeals judges to one on the panel agreed with the defense on several counts and found no evidence for the prosecution. Post presents the translated summary of the judgment. End Summary.

#### Background

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2. Amina Lawal is a divorced woman from a small village in the Northern State of Katsina. Eleven months after her divorce she was arrested by local police, who observed that she was pregnant, and charged with her with Zina (adultery) under Shari'a law. She supposedly confessed to police, was convicted in early 2002, and sentenced to death by stoning. After multiple appeals and delays, the Katsina State Sharia Appeals Court began hearing arguments on the case on August 27, 2003 and handed down a judgment in favor of Ms. Lawal on September 25. The man with which Amina Lawal allegedly committed adultery never confessed to the crime. As there were no witnesses to the act and he did not confess, one or the other being required under Shari'a, the man was acquitted during the first trial and released.

#### The Appeal

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3. Ms. Lawal's appeal centered on four main points:

-- Without four witnesses to the act of adultery, there must be a confession and the accused must be allowed to withdraw any confession made. There were questions about the confession, and in any case it had since been retracted.

-- The Nigerian court could only convict for something that was a crime under Nigerian law at the time of the crime. As the statute embodying Shari'a for criminal offenses had not been enacted at the time the alleged offense occurred, the case was ex post facto. Moreover, as court procedure for implementing the law had still not been passed by the legislature and gazetted, the court could not have followed any legal Nigerian criminal court procedure.

-- Complicated Shari'a-based arguments that adultery might not have occurred, under the Maliki school (predominant in Nigeria) of Islamic jurisprudence, if the baby was born within five years of the divorce, and that only her husband or the four witnesses to the act (not the police simply noticing her pregnancy) could charge her with adultery.

-- Notwithstanding the contention above that no legal code of procedure was in place, there were many obvious procedural flaws ranging from not explaining the crime and law to the accused (especially that she could only be convicted if she confessed, and that she could confess to a lesser crime), to those giving testimony to the court swearing by the Quran instead of "by God," to the accused not being represented by legal counsel nor being allowed to call witnesses, to there being only one judge instead of the required three at the trial.

#### The Prosecution

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4. The prosecution claimed that:

-- Amina Lawal understood the crime, did confess, and the confession was not withdrawn.

-- Shari'a as a body of law and procedure predated the crime and the court proceedings, therefore the charge was not ex post facto and Shari'a court procedure existed in the absence

of legally gazetted specific legislation.

-- Even more technical Maliki arguments that the five-year presumption that the child was the husband's did not apply because the (divorced) accused did not give the baby to the (ex-) husband, and that in the absence of eyewitnesses or the husband charging her, the police could charge her under the theory that "anyone seeing wrong should bring it to justice."

-- Legal arguments on procedure that explanations of the law, legal counsel, witnesses, and three judges are not necessary if the crime is obvious and confessed by the accused.

#### 4-1 Judgment Freeing Lawal

15. Four of the five Shari'a Appeals Court kadis (judges) decided that the lower court's ruling should be overturned for several reasons, essentially agreeing with the appeal that the confession was invalid, that even if it had been valid it could be withdrawn, that the charge was ex post facto application of Nigerian law, that the baby had not been proven not to be the (ex-) husband's, and that the police (as opposed to eyewitnesses or the husband) had no authority to charge her with adultery. On procedure, the court said that existing Shari'a sources should be applied but also that they must be gazetted. They also upheld all the specific challenges on procedures at the trial.

16. COMMENT: Thus it appears the judges waffled on whether Shari'a could be applied in criminal cases before court procedure for such cases had been enacted or gazetted. As this was the only challenge to use of Shari'a in principle after enactment of Shari'a-based penal codes for various northern Nigeria states, and court procedures have not been gazetted, both sides in the controversy still have legal ground to challenge Shari'a criminal court decisions without challenging whether Shari'a for criminal cases violates the Constitution or human rights law and international agreements per se. END COMMENT.

17. The four judges did include some zingers, reminding that in an adultery case it was up to the accusers to prove their charge and that accusers who could not prove it should receive 40 lashes. Moreover, if there were any doubts, they should have been decided in favor of the accused. The fifth appeals judge, Sule Sadi Kofar Bai, ruled against the appeal, essentially agreeing with the prosecution's presentation on all of the particulars. He too added a zinger, claiming that the Shari'a courts were not bound by Nigeria's Constitution. On the basis of the four judges' decision, Lawal was discharged and formally acquitted of all charges.

#### Text of the Majority Ruling

18. (Begin text translated from the original Hausa, with parenthetical explanations added by the Embassy)

The Court sat with its full 5 members comprising

Honorable Grand Kadi Aminu Ibrahim Katsina  
Honorable Kadi Suleiman Muhammad Daura  
Honorable Ibrahim Mai Unguwa  
Honorable Shehu Mu'azu Dan Muba  
Honorable Sule Sadi Kofar Bai

In his lead judgment, Honorable Grand Kadi Aminu Ibrahim Katsina recounted the entire proceeding before them, the arguments and replies of the Appellant Counsels.

In their 25 September Ruling, the Shari'a Appeal Court held:

- The duty of the police is important. However, they should not have charged the Appellant for an offence, as it is not necessarily their constitutional responsibility.

- For an offence of Zina (adultery) to be proved, the two accused persons must be seen performing the act of adultery openly by at least 4 responsible male adults, which is not the case of this appeal.

- The discharge of the second accused (i.e. the man who committed adultery with her) by the trial court, without establishing these 4 witnesses who saw the act of adultery, was done in error and cannot be sustained before this Court.
- The administering of swearing by the Holy Quran adopted by the trial court is not a proper procedure.
- Since the Appellant was not the wife of the second accused (at the trial, under the Shari'a she cannot be charged for adultery (by him)).
- Where anybody accuses someone of Zina (adultery) and cannot prove it, the person should be flogged 40 times.
- It is an abuse of the Shari'a Penal Court Law for a judge to sit alone at the trial when the Law provided that a judge should sit with two other members.
- It is true that the Holy Quran, the Hadith and the Sunnah of Prophet Mohammed, Ijmah, Qiyas, Ijtihad and Al-Urf should apply in Shari'a to arrive at judgment. However, there is need for it (procedure from these sources) to be gazetted.
- The State (the prosecutors) cannot choose and pick what they want in the Shari'a Penal Court Law of Katsina State.
- The commencement date of the Katsina State Shari'a Penal Code (being applicable) is as provided for in the law, June 12001.
- Four witnesses have not been established, therefore the Appellant must be discharged and acquitted.
- The confession of the Appellant (Lawal) is not valid.
- The Trial Court did not give opportunities for the Appellant to withdraw or retract her confession.
- If the Appellant had allegedly confessed and the second accused refused to confess, then it cannot be (a conviction for) adultery.
- The accused person cannot swear by the Quran, they can only swear by God.
- The record of the trial court is clear that the Appellant's confession was not allowed the process of IHIZARI (allowing her to confess to a lesser crime).
- There is doubt in the trial court record on the confession of the Appellant, and where such a doubt exists, it must be resolved in the favor of the accused person. The court recounted the entire story of Ma'is to buttress this point.
- The Appellant's pregnancy and childbirth could have been the product of the former husband. The burden of proof is only on prosecutor, not on the accused.
- An Appellant can withdraw her confession at any time before the judgment. When that is done, the trial court must accept it.
- An alleged Appellant must be advised at least 4 times the opportunity to withdraw or retract her confession.
- Where an Appellant withdraws or retracts her confession, she cannot be punished.
- Islam and Shari'a provide for Freedom, Protection and Justice, and because of all the above reasoning, the Court should dismiss all the charge against the Appellant.

The Court discharges and acquits the Appellant.  
MEECE